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August 20, 2012

BY HAND

Tony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6604 (CBS Radio Stations Inc. (WTIC))

Dear Mr. Herman:

This office represents CBS Radio Stations Inc., owner and operator of radio station WTIC, in the above-captioned Matter Under Review ("MUR"). This letter responds to the Complaint received by the Federal Election Commission ("FEC" or "Commission") on July 2, 2012. The Complaint alleges that CBS Radio Stations Inc.¹ made a prohibited corporate contribution to the campaign of Lisa Wilson-Foley, a candidate for the U.S. House of Representatives for Connecticut's 5th District, by producing and airing a radio talk show broadcast on WTIC in which the host engaged in a "political attack" against a candidate opposing Ms. Wilson-Foley.

For the reasons stated below, the Commission should find no reason to believe that CBS Radio Stations Inc. violated the Federal Election Campaign Act of 1971, as amended ("Act" or "FECA").

FACTS

CBS Radio Stations Inc. is a wholly-owned subsidiary of CBS Radio Inc., a media and entertainment corporation specializing in radio programming. CBS Radio Inc. is one of the largest owners and operators of radio stations in the nation and is an indirect subsidiary of CBS Corporation, a publicly traded mass media corporation. It is neither owned nor controlled by a candidate or political party.

WTIC is a news/talk AM radio station owned and operated by and licensed to CBS Radio Stations Inc., serving the greater Hartford area. The station broadcasts nationally syndicated programming such as The Rush Limbaugh Show and The

¹ In his Complaint, the complainant makes references to both CBS Radio Stations Inc. and CBS Radio, Inc. Since radio station WTIC is owned and operated by and licensed to CBS Radio Stations Inc. and the Commission's request for a response was addressed solely to CBS Radio Stations Inc., this response is filed on its behalf.

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Sean Hannity Show, and it also features local programming, including a program hosted by John Rowland. Mr. Rowland's show has been on the air since September 2010. It airs on weekdays from 3 p.m. to 6 p.m. and "focuses on local issues that affect our towns and state" See CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtics-state-and-church/>. Among one of the first issues covered on the show was the death penalty, see NBC Connecticut, *Former Governor Rowland Lands Radio Show*, <http://www.nbcconnecticut.com/news/politics/Former-Governor-Rowland-Lands-Radio-Show-102944214.html> (Sept. 15, 2010), and topics cover a range of subjects, from discussions of recent legislative activity to healthcare, state spending, and taxes.

Kenneth Kravets filed a complaint with the Commission on July 2, 2012, alleging that the Lisa Wilson-Foley for Congress Campaign Committee, John Rowland, and CBS Radio Stations Inc. had violated various regulations (the "Complaint"). With respect to CBS Radio Stations Inc., the Complaint alleges that certain programming on Mr. Rowland's show constituted a prohibited corporate contribution to the Wilson-Foley campaign. Compl. at 3. "[O]n one occasion," the Complaint alleges, Mr. Rowland invited a political opponent of Ms. Wilson-Foley on his radio show and "berated" him. *Id.* at 2 (quoting Colin McEnroe, *Rowland Dances Again On Edge Of Darkness*, Hartford Courant (Apr. 27, 2012)). In addition, on an unspecified number of occasions Mr. Rowland allegedly criticized the same candidate's position on the death penalty and also announced the candidate's cellular telephone number. *Id.* (quoting McEnroe, *supra*).

According to the Complaint, Mr. Rowland's statements may have been coordinated with the Wilson-Foley campaign. In particular, the Complaint and its accompanying materials allege that, during a five-month period in 2011-2012, Mr. Rowland was party to a consulting contract with a company whose president is Ms. Wilson-Foley's husband. In light of this consulting relationship, the Complaint suggests that "[i]t appears that the Wilson-Foley campaign and John Rowland coordinated [the] political attack" on the candidate opposing Ms. Wilson-Foley. In the complainant's view, this "coordinated" activity constituted an in-kind contribution of air-time by CBS Radio Stations Inc. to the Wilson-Foley campaign, in violation of 11 C.F.R. § 114.2. *Id.* at 3.

THE ACT AND REGULATIONS

Under the FECA, corporations are prohibited from making contributions in connection with a federal election. See 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2.

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"Contribution" is defined to include "anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(a). The term "anything of value" includes all in-kind contributions, 11 C.F.R. § 100.52(d)(1), including communications that are coordinated with a candidate, 11 C.F.R. § 109.21. Consistent with exceptions in the FECA, however, the Commission has long exempted from the definition of "contributions"

[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, ... unless the facility is owned or controlled by any political party, political committee, or candidate

11 C.F.R. § 100.73; *see also id.* § 100.132 (same exemption as to "expenditures"); 2 U.S.C. § 431(9)(b)(i).

This provision—known as the "media" or "press" exemption—is jurisdictional. In other words, if the exemption applies, "the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint." *FEC v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981). Thus, where the press exemption applies, "[n]o inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc." *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

Generally speaking, the Commission conducts a two-step analysis to determine whether the press exemption applies in a given case. At the outset, the Commission determines whether the entity engaging in the activity is a press entity as described by the Act and regulations. *See* General Counsel's Report, MUR 6242 (J.D. Hayworth 2010, et al.) at 5. Next, the Commission considers, first, whether the press entity is owned or controlled by a political party, political committee, or candidate. If it is not, the Commission then turns to "whether the press entity is acting as a press entity in conducting the activity at issue (i.e., whether the entity is acting in its 'legitimate press function')." *Id.* As to this final inquiry, the Commission's analysis is to be guided by two considerations: (1) whether the entity's materials are available to the general public, and (2) whether the challenged materials are comparable in form to those ordinarily issued by the entity. *FEC Advisory Opinion 2005-16*, at 4 (Fired Up!); *see also Reader's Digest Ass'n*, 509 F. Supp. at 1215.

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The press exemption has been regularly applied by the Commission to forestall efforts to target the right of media entities to comment on matters of national concern. *See, e.g.*, MUR 6320 (John Gomez, et al.); MUR 6242 (J.D. Hayworth 2010, et al.); MUR 5928 (Kos Media, LLC, et al.); MUR 5569 (John Kobylt, et al.); MUR 5562 and 5570 (Sinclair Broad. Grp., Inc.); MUR 5555 (Dave Ross, et al.); MUR 4689 (Robert K. Dorman, et al.); MUR 3931 (CBS, Inc., et al.); MUR 3500 (Garry B. Trudeau, et al.); MUR 486 (Charles Percy, et al.). In this way, the press exemption reflects the nation's "profound ... commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). "Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change ... muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." *Mills v. Alabama*, 384 U.S. 214, 219 (1966); *see also Reader's Digest Ass'n*, 509 F. Supp. at 1214 ("[F]reedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation."). Indeed, the legislative history of the FECA confirms that the statutory press exemption serves to "assure[] the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93d Congress, 2d Sess. at 4 (1974).

In keeping with this broad protection afforded media entities, "the Commission ... avoid[s] investigating the media whenever possible." ADR 228 Case Analysis Report (Feb. 11, 2005). Commissioners have repeatedly announced that the media exemption applies without regard to whether programming is biased or balanced, *e.g.*, MUR 5928 (Kos Media, LLC, et al.); MUR 3624 (Walter H. Shapiro); Statement of Reasons by Comm'rs Weld, McDonald, Mason, Sandstrom, and Thomas in MURs 4929, 5006, 5090, and 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times and Washington Post), and without regard to the presence or absence of alleged coordination between a media entity and a candidate, *e.g.*, Statement of Reasons of Vice Chairman Toner and Comm'rs Mason and Smith in MURs 5540 and 5545 (CBS Broad. Inc., et al.); Statement of Reasons of Comm'r Weintraub in MURs 5540, 5545, 5562, and 5570 (CBS Broad., Inc., et al.); *see generally* 71 Fed. Reg. 18589-01, 18609-10 (Apr. 12, 2006). In short, the Commission "cannot and should not attempt to arbitrate claims of media bias or breaches of journalistic ethics." Statement of Reasons of Comm'r Weintraub in MURs 5540, 5545, 5562, and 5570 (CBS Broad., Inc., et al.).

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DISCUSSION

The press exemption applies in this case. First, CBS Radio Stations Inc. is a bona fide media entity, and it is not owned or controlled by a political party, political committee, or candidate. Accordingly, it meets step one of the press exemption analysis.

Turning to the second step in the analysis, CBS Radio Stations Inc. was acting as a press entity at all times when it produced and broadcast Mr. Rowland's show on radio station WTIC. As noted above, the primary considerations in determining whether an entity is acting in its legitimate press function are "whether the entity's materials are available to the general public" and "whether they are comparable in form to those ordinarily issued by the entity." First General Counsel's Report, MUR 6242 (J.D. Hayworth 2010, et al.) at 6; First General Counsel's Report, MUR 6320 (John Gomez for Congress, et al.) at 8. Here, Mr. Rowland's week-day radio program—like all WTIC-1080 programming—was at all times available to the general public throughout southern New England. *See* First General Counsel's Report, MUR 6242 (J.D. Hayworth 2010, et al.) at 6 ("[W]e first note that the broadcasts were available to the general public."). Furthermore, the format of the challenged broadcasts (or, more precisely, unspecified tidbits of unspecified broadcasts) "appear[s] to be comparable in form to those broadcasts of the Show ordinarily issued by [CBS Radio Stations Inc. on WTIC]." *See id.*

As noted by one Commissioner, "[w]hether particular broadcasts were fair, balanced, or accurate is irrelevant given the applicability of the press exemption." Statement of Reasons by Comm'r Weintraub in MURS 5540, 5545, 5562, and 5570 (CBS Broad. Inc., et al.) at 2; *see also* Statement of Reasons by Chairman Toner and Comm'rs Mason and von Spakovsky in MUR 5569 (Kobylyt, et al.) at 3 ("[I]n applying the press exemption, the political content of the show is immaterial.") (footnote omitted). Likewise, "it is important to emphasize that the press exemption shields press entities from investigations into alleged coordination." Statement of Reasons of Comm'r Weintraub in MURS 5540, 5545, 5562, and 5570 (CBS Broad., Inc., et al.), at 1. Like its sister company in the *CBS Broadcasting* matter, CBS Radio Stations Inc. has acted squarely in keeping with its long-standing press functions at all times, and "[s]ince the programs at issue were in the ordinary course of the radio network['s] broadcast operations, it is beyond question that the media exemption applies." *See* Additional Statement of Reasons of Comm'r Mason in MUR 4689 (Robert K. Dornan, et al.) at 3 (internal citation omitted).

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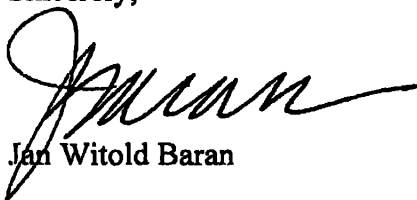
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CONCLUSION

For the foregoing reasons, the allegations in the Complaint do not describe a violation of the law. CBS Radio Stations Inc., as owner and operator of radio station WTIC, therefore respectfully requests that the Commission find no reason to believe that it violated the Act.

Sincerely,



Jan Witold Baran

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